

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION**

INNOVATION VENTURES, LLC D/B/A  
LIVING ESSENTIALS,  
Plaintiff,

v.

ULTIMATE LIFESTYLES, LLC AND  
CUSTOM NUTRITION LABORATORIES, LLC  
Defendants.

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CIVIL ACTION NO. 4:08-CV-232

**MEMORANDUM ADOPTING REPORT AND  
RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE**

Came on for consideration the report of the United States Magistrate Judge in this action, this matter having been heretofore referred to the United States Magistrate Judge pursuant to 28 U.S.C. § 636. On March 26, 2009, the report of the Magistrate Judge was entered containing proposed findings of fact and recommendations that Defendants' Second Motion to Dismiss or Alternatively to Transfer or Abate (Dkt. 74) and Supplemental Motion to Dismiss or Alternatively to Transfer or Abate (Dkt. 90) be GRANTED in part and DENIED in part such that the motions to dismiss should be GRANTED as to the claims under Counts VIII or Count IX and DENIED as to all other claims, the motion to transfer should be DENIED, and the motion to abate should be DENIED.

The Court, having made a *de novo* review of the objections raised by Plaintiff and Defendants' response to those objections, is of the opinion that the findings and conclusions of the Magistrate Judge are correct, and the objections of Plaintiff are without merit as to the ultimate conclusion and recommendations of the Magistrate Judge. Therefore, the Court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of this Court, and

Defendants' Second Motion to Dismiss or Alternatively to Transfer or Abate (Dkt. 74) and Supplemental Motion to Dismiss or Alternatively to Transfer or Abate (Dkt. 90) is GRANTED in part and DENIED in part such that the motions to dismiss are GRANTED as to the claims under Counts VIII or Count IX and DENIED as to all other claims, the motion to transfer is DENIED, and the motion to abate is DENIED.

**IT IS SO ORDERED.**

**SIGNED this 26th day of May, 2009.**

A handwritten signature in black ink, reading "Michael H. Schneider", written over a horizontal line.

MICHAEL H. SCHNEIDER  
UNITED STATES DISTRICT JUDGE